



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2003

Ms. Maleshia Brown Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-8123

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190947.

The City of Fort Worth (the "city") received a request for fourteen categories of information relating to a named police officer and/or police department prostitution sting operations. You inform us that the city will release some of the requested information. You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Initially, we address your claim under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Gov't Code § 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984)

(information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information at issue would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989); *see also* Open Records Decision Nos. 434 at 2 (1986) (circumstances of each case must be examined to determine whether release of particular information would interfere with law enforcement or crime prevention), 409 at 2 (1984) (whether disclosure of particular records will interfere with law enforcement or crime prevention must be decided on case-by-case basis). You contend that the release of the information submitted as Exhibit C would reveal methods, techniques, and strategies employed by the police department for preventing and detecting crime. Having considered your arguments and reviewed the information in question, we conclude that the department may withhold all of the information in Exhibit C under section 552.108(b)(1) of the Government Code.

Next, we address your claims under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Information created or maintained by a mental health professional is confidential under section 611.002 of the Health and Safety Code. This section provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2).

Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the submitted information that is confidential under section 611.002 of the Health and Safety Code. There is no indication that the requestor has a right of access to this information under sections 611.004 and 611.0045. Therefore, the city must withhold the information that is subject to section 611.002 under section 552.101 of the Government Code.

The submitted documents also include information that is confidential under section 1701.306 of the Occupations Code. Chapter 1701 of the Occupations Code is applicable to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). Section 1701.306 provides in part:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306(a)-(b) (emphasis added). We have marked the information that the city must withhold under section 552.101 of the Government code in conjunction with section 1701.306 of the Occupations Code.

Chapter 1703 of the Occupations Code codifies the Polygraph Examiners Act. *See* Occ. Code § 1703.001. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
 - (2) the person that requested the examination;
 - (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
 - (4) another polygraph examiner in private consultation; or
 - (5) any other person required by due process of law.
- (b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.
- (c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Id. § 1703.306. We have marked the submitted information that is confidential under section 1703.306. There is no indication that the requestor has a right of access to this information. Therefore, the information that is confidential under section 1703.306 of the Occupations Code also must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information with regard to a specific individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993).

The common-law right to privacy also encompasses the types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since determined that other types of

information also are private under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private).

Common-law privacy also encompasses certain kinds of personal financial information. This office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files).

The city contends that portions of the submitted information are private under section 552.101. We have marked the information that the city must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

The city also contends that some of the submitted information is excepted from public disclosure under section 552.117 of the Government Code. The home address and telephone number, social security number, and family member information of a peace officer must be withheld from the public under section 552.117(a)(2), regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. As you correctly note, Open Records Decision No. 670 at 6 (2001) authorizes governmental bodies that are subject to chapter 552 of the Government Code to withhold peace officers' section 552.117 information without the necessity of requesting an attorney general decision under section 552.301. We have marked the types of information that the city must withhold from the public under section 552.117(a)(2).

Lastly, we note that section 552.130 of the Government Code encompasses some of the submitted information. This section excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). Section 552.130(a)(1) is applicable to information that relates to a Texas driver's license. Section 552.130(a)(2) encompasses a Texas license plate or vehicle identification number. We have marked the information that the city must withhold under section 552.130.

In summary: (1) the city may withhold Exhibit C under section 552.108(b)(1) of the Government Code; (2) the city must withhold the information that is confidential under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, sections 1701.306 and 1703.306 of the Occupations Code, and common-law privacy; and (3) the city also must withhold the information that is excepted from disclosure under sections 552.117 and 552.130. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

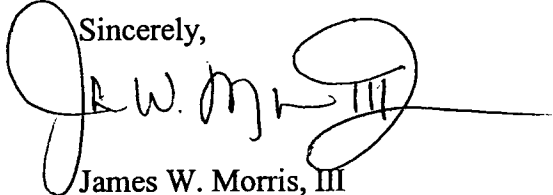
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 190947

Enc: Submitted documents

c: Mr. Lex Johnston
3001 West Fifth Street, Suite D
Fort Worth, Texas 76107
(w/o enclosures)